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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 D. Buddy Wayne,

10 Plaintiff,

11 v.

12 Sullivan Investments Incorporated, et al.,

13 Defendants.
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No. CV-15-01473-PHX-DGC

ORDER

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16 Defendants Sullivan Investments Corporation, Robert Sullivan, and Christopher
17 Sullivan have filed a motion to strike Plaintiff's application for default. Doc. 11. The
18 Court will grant the motion.


19 Plaintiff filed a pro se complaint on July 31, 2015. Doc. 1. Plaintiff allegedly
20 served defendants on August 26, 2015, but the proof of service only indicates that it was
21 served at the "place of business" without indicating who received the summons. Doc. 7.
22 On September 25, 2015, Plaintiff filed an application for default alleging that Defendants
23 had not filed a timely response. Doc. 8. On September 29, 2015, Defendants filed an
24 answer (Doc. 9) and the motion to strike Plaintiff's application for default (Doc. 11).
25 Defendants' motion alleges that they were not properly served as required by Rule 4
26 because the summons did not issue until August 28, 2015, was served on a receptionist,
27 and was never served on Robert and Christopher Sullivan. Doc. 11 at 2. Plaintiff has not
28 opposed the motion to strike.

1 The Court will grant Defendants' motion. The proof of service states that the
2 summons was served on August 26. Doc. 7. In reality, the Court issued the summons on
3 August 28, making service on August 26 impossible. The proof of service also fails to
4 identify who accepted service. *Id.* Furthermore, Robert and Christopher Sullivan were
5 not served.

6 Despite not being properly served, Defendants have voluntarily appeared and filed
7 an answer. As a result, Plaintiff need not serve them. The Court has set a Rule 16 case
8 management conference for December 16, 2015 (Doc. 12), and the case will proceed.
9 The Court reminds Plaintiff that he must comply with all federal and local rules. The
10 Federal Rules of Civil Procedure and the Court's local rules of civil procedure are
11 available on the Court's website at www.azd.uscourts.gov. A copy of the Court's local
12 rules may also be obtained from the Clerk's Office.

13 **IT IS ORDERED** that Defendants' motion to strike Plaintiff's application for
14 default (Doc. 11) is **granted**.

15 Dated this 23rd day of November, 2015.

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20 David G. Campbell
21 United States District Judge
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